

Remarks

Claims 1-11 are pending in the application. Claims 2, 5-7 and 9 have been cancelled without prejudice. Claims 1, 3, 4, 8, 10 and 11 have been amended. New claims 12, 13 and 14 have been added. Support for these amendments is found in claim 1, 3, 4, 8, 10 and 11 as originally filed, and on pg. 11, lns. 7-9 of the specification. Support for new claims 12, 13 and 14 is found on pg. 11. lns. 7-9 of the specification. The current claim set is presented in the attached appendix entitled "Amendments to the Claims." Reconsideration of the claims is requested based on the amendments and remarks set forth below.

PTO 1449 Forms

Applicant acknowledges that the Examiner has initialed and returned the PTO 1449 form submitted with the IDS on November 6, 2001. Applicant respectfully requests that the Examiner initial the PTO Form 1449 submitted with the Supplemental IDS filed on March 12, 2002, and return a copy to Applicant's undersigned representative.

Response to section 112, 2nd paragraph rejection

Claim 1 is rejected under 35 U.S.C. 112, 2nd paragraph as indefinite for lacking antecedent basis for "the total pellet," as recited in the last line of the claim. Claim 1 has been amended to provide antecedent basis for this phrase.

Claims 5-11 are rejected under 35 U.S.C. 112, 2nd paragraph as allegedly being indefinite for reciting "the use of fish feed to effect a change in the pigment of fish." Claims 5-7 and 9 have been cancelled, and thus the rejection is moot as to these claims. Claims 8 and 10-11 have been amended to recite methods of enhancing the uptake of pigment by fish to induce a change in the pigmentation of the fish's flesh. Applicant believes that these amendments overcome the indefiniteness rejection of claims 8 and 10-11.

Response to section 101 rejection

Claims 5-11 are rejected under 35 U.S.C. 101 as allegedly reciting non-statutory subject matter. As stated above, claims 5-7 and 9 have been cancelled and claims 8 and 10-11 are no longer in the "use" format, but now recite methods of enhancing the uptake of pigment by fish to induce a change in the pigmentation of the flesh. Claims 8 and 10-11 are

believed to be in proper process claim format, and the 35 U.S.C. 101 rejection of these claims should be withdrawn.

Response to the section 103(a) rejection

Claims 1 – 11 are rejected under 35 U.S.C. 103(a) as allegedly rendered obvious by Iwahashi et al., Bulletin of the Japanese Society of Scientific Fisheries, Vol. 42, No. 12, Pages 1339-1344 (1976), hereinafter “Iwahashi.” Claims 2, 5-7 and 9 have been cancelled, and the rejection is moot as to these claims. Applicant respectfully traverses the rejection with respect to claims 1, 3, 4, 8, and 10-11 .

Claims 1, 3, 4, 8 and 10-11 recite methods of enhancing the uptake of pigment by fish to induce a change in the pigmentation of the fish’s *flesh*, by feeding the fish a feed which comprises a pigment and cholesterol.

Iwahashi discloses that *skin* pigmentation in decorative carp can be improved by the addition of carotenoids into the diet of the fish. Although cholesterol is present in certain of the feeds disclosed in Iwahashi, the abstract explicitly states that “[c]holesterol added to the test diets had no effect on the accumulation of carotenoids” in the fish skin. Moreover, Iwahashi does not disclose or suggest that the Iwahashi feeds can influence the color of a fish’s flesh.

There is a distinct and appreciable difference in the art between influencing the coloring of a fish’s skin and altering the coloring of a fish’s flesh. Influencing the skin color of the fish (as per Iwahashi) makes the fish more desirable to consumers when the fish is alive and kept in captivity. The presently claimed methods, however, influence the color of the fish flesh, which change is not readily detectable when the fish is still alive. Rather, the color of the fish’s flesh becomes apparent once the fish has been processed for consumption, whereupon the change in color of the flesh imparted by the present methods makes the fish more desirable to the consumer.

Thus, one skilled in the art would not have been motivated by the disclosure in Iwahashi to use a fish feed containing cholesterol, as recited in the present claims, to improve the uptake and absorption of pigment into a fish’s flesh. In fact, Iwahashi specifically teaches away from the present invention, by stating that the addition of

cholesterol to fish feed does not influence the accumulation of pigment. The 35 U.S.C. 103(a) rejection of claims 1, 3, 4, 8 and 10-11 should be withdrawn.

Conclusion

The claims of the application are believed to be in condition for allowance. An early action toward that end is earnestly solicited.

Respectfully submitted,

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